

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
ALLTEL Communications, Inc.)	DA 03-1882
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
In the State of Alabama)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to the proceeding on ALLTEL Communications, Inc.'s (ALLTEL) petition for designation as an eligible telecommunications carrier (ETC) for the state of Alabama.¹ OPASTCO is a national trade association representing approximately 500 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies

¹*Wireline Competition Bureau Seeks Comment on ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45, Public Notice, DA 03-1882 (rel. June 3, 2003).

as defined in 47 U.S.C. §153(37). In addition, they are all ETCs in their respective service areas.

ALLTEL's application for ETC designation in the state of Alabama should be denied unless and until a more complete public interest showing, taking into account both the public benefits and the public costs of granting ETC status to ALLTEL, can be made. Alternatively, ALLTEL's application should be stayed pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs.

II. COMMENTS

The applications of ALLTEL in Alabama and other states,² as well as similar requests made by Nextel Partners,³ mark a significant change in the type of commercial mobile radio service (CMRS) providers that are applying for ETC designation. Prior applications that have come before the Commission have involved primarily smaller regional CMRS providers.⁴ ALLTEL and Nextel are the first CMRS providers with national networks to file ETC applications with the FCC. The manner in which the Commission addresses these applications will therefore have a significant impact on the future funding demands of the High-Cost program.

² To the best of OPASTCO's knowledge ALLTEL has applied for ETC status in Alabama, Michigan, and Virginia. It has been reported that ALLTEL made the decision to seek ETC status for its wireless properties "purely for business reasons" and that it "has faced increasing financial pressures to seek such status for its own [wireless] holdings." See, "*ALLTEL Applications for Wireless ETC Status Raises Red Flags Among Rural Wireline Carriers*," *TR Daily* (April 25, 2003).

³ To the best of OPASTCO's knowledge Nextel has applied for ETC status in New York, Pennsylvania, Virginia, and Arkansas.

⁴ Other regional carriers that have applied to the FCC for ETC status in areas served by rural telephone companies include RCC Cellular, Cellular South, and Western Wireless Corporation. Numerous others have applied for and received ETC designations from their respective state commissions.

If the Commission grants ALLTEL's application for Alabama and other similar applications that are currently pending, it will only serve to encourage additional CMRS providers, including other large national carriers, to apply as well. This is because once one CMRS provider obtains ETC status in a rural area, the other CMRS providers in the area will be compelled to seek ETC designation as well in order to remain competitive.⁵ In addition, should it become apparent that funding is readily available to CMRS providers merely for the asking, carriers may be violating their fiduciary obligation to their shareholders if they chose not to apply.

Such a large-scale increase in ETC designation requests will surely hasten the rapid escalation of the size of the Universal Service Fund (USF) as predicted by OPASTCO and other parties.⁶ In its recent white paper *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO estimated that if all CMRS providers nationwide were to apply for and receive ETC status, the annual funding level of the High-Cost program would increase by approximately \$2 billion.⁷ This would seriously threaten the continued ability of the High-Cost program to ensure the provision of affordable and "reasonably comparable" services and rates to consumers in the most remote regions of the nation.

On February 7, 2003, the Federal-State Joint Board on Universal Service (Joint

⁵ This is already occurring. For example, throughout Iowa many rural telephone company study areas have two, and in some cases even three mobile wireless providers that have been designated as ETCs. *See*, Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2003* (Jan. 31, 2003), Appendix HC07.

⁶ *See*, OPASTCO Comments in CC Docket No. 96-45 (filed May 5, 2003), pp. 10-11 (OPASTCO Portability Comments). *See also*, National Association of State Utility Consumer Advocates (NASUCA) Comments in CC Docket No. 96-45 (filed May 5, 2003), p. 3 (NASUCA Portability Comments).

⁷ Stuart Polikoff, *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO, (January 2003), p. 21.

Board) issued a Public Notice which sought comment on numerous competitive universal service issues, including the process for designating ETCs and the methodology for calculating support in competitive study areas.⁸ Comments and reply comments have been filed in this proceeding, and the Joint Board will be conducting a hearing on these issues on July 31, 2003. It is quite possible that, as a result of this proceeding, there will be significant changes in the way in which competitive ETCs are designated, and in the level of support that they receive.

In their comments on ALLTEL's ETC Petition, Verizon recommends that until the issues being considered in the Joint Board Portability Public Notice are resolved, the Commission should stay the approval of additional ETC applications.⁹ OPASTCO believes that the public interest would best be served by preventing the USF from growing out of control at the same time that key policies related to universal service support levels and ETC designations are currently under review. Moreover, until these issues are resolved, it remains unclear how the Commission should evaluate whether or not the designation of an additional ETC would serve the public interest in any given rural service area. Thus, a stay on the review of pending ETC applications as proposed by Verizon and others would be one possible way in which this problem could be addressed.

While these comments are not intended to debate the many nuances of

⁸ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941 (2003) (Joint Board Portability Public Notice).

⁹ See, Verizon Comments, pp. 1, 8. This proposal is similar to one made by the National Telecommunications Cooperative Association (NTCA) in their reply comments to the Joint Board Portability Public Notice. See, NTCA Reply Comments in CC Docket No. 96-45 (filed June 3, 2003), pp. 22-23.

considering the public interest when evaluating an ETC application, OPASTCO wishes to comment briefly on the manner in which ALLTEL and the Cellular Telecommunications & Internet Association (CTIA) justify ALLTEL's application as being in the public interest.

Section 214(e)(2) of the Telecommunications Act of 1996 requires that prior to designating an additional ETC in an area served by a rural telephone company, the Commission must find that such designation is in the public interest. Within its application, ALLTEL argues that:

[d]esignating ALLTEL as an ETC in Alabama would further the public interest by bringing the benefits of additional competition [sic] service offerings to an underserved marketplace....Competition drives down prices and promotes the development of advanced communications as carriers vie for a consumer's business....Designating ALLTEL as an ETC will bring to consumers these same benefits of competition, including increased choices, higher quality services and lower rates.¹⁰

In their comments CTIA states that it:

...agrees with ALLTEL that a grant of ALLTEL's application will serve the public interest by bringing the benefits of competition to an underserved marketplace and bring new advanced telecommunications services to consumers in Alabama. Furthermore, designating ALLTEL as an ETC promotes the development of advanced communications and is consistent with the principal goals of the universal service program.¹¹

Thus, ALLTEL's application, and CTIA's supporting comments, are based entirely on vague generalities regarding the generic benefits of competition. There is absolutely no evidence indicating that the area for which ALLTEL seeks ETC status is currently "underserved." Indeed, in their comments, the Alabama Rural LECs indicate

¹⁰ *ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama* (filed April 14, 2003), pp. 10-11.

¹¹ CTIA Comments, p. 4.

that this area is very well served.¹² Moreover, there is no evidence that ALLTEL would serve any new areas beyond those that it currently serves, nor that ALLTEL would broaden its service offerings or reduce its prices if it were granted ETC status. There is also no indication that approval of ETC status for ALLTEL would materially increase the level of competition in the marketplace or hasten the delivery of advanced services.

Furthermore, there is no discussion in ALLTEL's application, nor in CTIA's comments, of the public costs that would be incurred by providing high-cost support to ALLTEL for its existing customer base. In comments on the Joint Board Portability Public Notice, OPASTCO and other parties explained that a meaningful public interest analysis must address both the benefits and costs of designating an additional ETC in a rural service area, and that such a designation should occur only when the public benefits from supporting multiple providers exceed the public costs created by supporting multiple networks.¹³ Therefore, if the Commission decides not to stay ALLTEL's application as suggested by Verizon and others, then the Commission should deny the application unless and until ALLTEL can make a meaningful demonstration that its designation as an ETC would serve the public interest.

Finally, OPASTCO would like to clarify a misunderstanding that may have been created by Verizon's comments regarding the Interstate Access Support (IAS) received by price cap carriers. Verizon states that "[u]nlike other portions of the high-cost fund, the interstate access support established by the CALLS Order was designed to reform the

¹² Alabama Rural LECs Comments, pp. 13-14.

¹³ OPASTCO Portability Comments, pp. 40-44. *See also*, for example, NASUCA Portability Comments, pp. 8-11; CenturyTel Portability Comments, pp. 16-31; TCA Portability Comments, pp. 3-6; USTA Portability Comments, pp. 8-15; ICORE Portability Comments, pp. 10-16.

access charge regime.”¹⁴ While it is indeed true that IAS recovers costs previously recovered in access charges, the Interstate Common Line Support (ICLS) mechanism established by the Multi-Association Group (MAG) Order was similarly implemented in order to recover legitimate interstate access costs incurred by rate-of-return carriers.¹⁵

¹⁴ Verizon Comments, p. 2.

¹⁵ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19667-19668, para. 128 (2001).

III. CONCLUSION

For the foregoing reasons, the Commission should deny ALLTEL's application for ETC designation in Alabama unless and until a more complete public interest showing is made which takes into consideration both the public benefits and the public costs of granting ALLTEL ETC status. Alternatively, ALLTEL's application should be stayed pending the resolution of the current proceeding that is considering changes to the calculation of high-cost support for competitive ETCs and the development of policy guidelines for the review of ETC applications.

Respectfully submitted,

**THE ORGANIZATION FOR THE
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July 14, 2003

CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 14th day of July, 2003, to those listed on the attached list.

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